

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

Crl.Rev.Pet.No. 769 of 2000()

CRA.135/1994 of SESSIONS COURT, MANJERI
CC.387/1993 of JUDL. MAGISTRATE OF FIRST CLASS, MALAPPURAM
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REVN. PETITIONER/APELLANT/ACCUSED

PARAMBATH RATNAKARAN
S/O GOPALAN, KAMETH, ANCHARAKANDI
POST MAMPRA, KANNUR DISTRICT

BY ADV. SRI.P.V.MOHANAN
SRI.B.S.SIVAJI

RESPONDENT/ RESPONDENT/ COMPLAINANT

THE STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR , HIGH COURT OF KERALA

BY PUBLIC PROSECUTOR C.K. SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 13/09/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.R.UDAYABHANU, J.

CRL. R.P. NO. 769 OF 2000

Dated this the 13th day of September, 2007

ORDER

The revision petitioner is the accused in C.C. No.387/93 with respect to the offence punishable under Sections 279, 337, 338 and 304 (A) of the IPC.

2. The prosecution case is that on 17.9.1993 at 4.15 P.M. the accused drove KSRTC Bus No. KLX 6424 through the National Highway from South to North in a rash and negligent manner so as to endanger human life, and at road junction at Changuvatti it hit against an Autorikshaw bearing Reg. No. KL-11/B 1787 driven by PW2 from West to East. PWs 3, 4 and one Subair were travelling in the Autorikshaw driven by PW2 at the time of accident. Due to the accident PW2 and PW3 sustained simple injuries and PW4 sustained grievous hurt. Sri. Subair who was also in the Autorikshaw died on account of the injuries sustained in the accident.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 to 15 and Exts. P1 to P12. PWs' 2 to 4 are the persons traveling in the Autorikshaw. According to PW2 the accident

was due to the negligence of the driver of the Bus who drove it in over speed. Ext.P8 scene mahazar is not helpful to identify the exact spot where the accident has taken place. It is seen from Ext.P8 that the National Highway is lying in north south direction. At the junction the road turns towards north west direction and proceeds towards Calicut and the road goes straight to north towards Kottakkal. The version of the witnesses is that the Bus was in over speed. The Autorikshaw has to take a turn towards South at the spot. If both the drivers had been cautious, the accident would not have taken place. In order to establish objectively that the Bus was in over speed the investigating Officer should have noted the tyre marks of the Bus which would have been at the spot, if the Bus was driven in over speed. It is the case set up by the defence that the Autorikshaw driver had driven the vehicle in a rash and negligent manner and took the vehicle ahead and hit left side of the Bus and that the damages are on the front side of the Autorikshaw and front left side of the Bus. There is no evidence that the Autorikshaw was thrown away in the impact, which would have happened if the Bus had been in over speed. The witnesses who supported the prosecution are all passengers in the Autorickshaw and who sustained injuries. It is

pointed out that the driver of Autorikshaw would have sustained serious injuries as the front side of the Autorikshaw has been completely damaged. But the driver escaped without injuries. It is submitted by PW2 that the deceased was driving the Auto in tact. In the circumstances I find that the accused is entitled to benefit of doubt. The conviction and sentence imposed is set aside. The accused stands acquitted.

The Criminal Revision Petition is allowed.

K.R.UDAYABHANU , JUDGE

vps

ANTONY DOMINIC, JUDGE

OP NO.16383/98

JUDGMENT

5TH SEPTEMBER, 2007